



For a thriving New England

CLF Vermont

15 East State Street, Suite 4
Montpelier, VT 05602
P: 802.223.5992
F: 802.223.0060
www.clf.org

January 8, 2018

Jeffrey Rawson, President
Strategic Commercial Realty, Inc. dba Rawson Materials
6 Kennedy Drive
Putnam, CT 06560

Zangari Cohn Cuthbertson, Registered Agent
Strategic Commercial Realty, Inc. dba Rawson Materials
59 Elm Street, Suite 400
New Haven, CT 06510

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)¹ hereby gives notice of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. 1365(a), for the violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Connecticut seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is twofold. First, Strategic Commercial Realty Inc., dba Rawson Materials (hereafter “Rawson”) is discharging stormwater directly associated with sand and gravel mining at four of its Connecticut locations to the waters of the United States without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). The locations are (1) Rawson Materials Plant #1, 205 Munyan Road, Putnam CT

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Five Mile River, Moosup River, Thames, and Mill Brook watersheds for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF’s membership includes people who live in or near the Five Mile River, Moosup River, Thames, and Mill Brook watersheds, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

06260, (2) Rawson Materials Plant #2, 6 Kennedy Drive, Putnam, CT 06260,² (3) Rawson Materials Plant #4, 0 Black Hill Road, Plainfield CT 06374,³ (4) Rawson Materials Plant #5, 349 Norwich Road, Plainfield, CT 06374 (hereafter, collectively, “Facilities”). Second, Rawson has not sought, obtained coverage under, or complied with the conditions of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”)⁴ issued by the Connecticut Department of Energy and Environmental Protection (“DEEP”) in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1), 122.26(e)(1). In addition, the Facilities’ process water discharges associated with its mine dewatering discharges cannot be covered under the General Permit but must be covered under an individual NPDES permit, or eliminated.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into Waters of the United States. The consensus among agencies and water quality specialists is that stormwater⁵ pollution accounts for more than half of the total pollution entering the marine environment each year.

DEEP has designated more than 1000 river miles and 6000 acres of larger waterbodies in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁶ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as the primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve

² While the business address for the Facility is listed as 6 Kennedy Drive, Putnam CT 06260, the Facility is physically located across the river on an unnamed access road, past the recycling plant located at 16 Kennedy Drive, Putnam CT 06260.

³ While the business address for the Facility is listed as 0 Black Hill Road, Plainfield CT 06374, the Facility is physically located approximately one mile northwest of this address. Per GoogleEarth, the Facility can be accessed by driving south of 0 Black Hill road and turning north onto an unnamed access road.

⁴ CONNECTICUT DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION, GENERAL PERMIT FOR THE DISCHARGE OF STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY (October 1, 2016), http://www.ct.gov/dep/lib/dep/Permits_and_Licenses/Water_Discharge_General_Permits/storm_indust_gp_100111.pdf [hereinafter GENERAL PERMIT]. Connecticut’s General Permit for the Discharge of Stormwater Associated with Industrial Activity was first issued on October 1, 1992. It has been reissued and/or modified several times since then. The current General Permit became effective on October 1, 2016, and will expire on September 30, 2018.

⁵ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. *See* 40 C.F.R. § 122.26(b)(13).

⁶ *See* U.S. ENVTL. PROTECTION AGENCY, CONNECTICUT WATER QUALITY ASSESSMENT REPORT (2012), https://iaspub.epa.gov/waters10/attains_state.control?p_state=CT&p_cycle=2012.

the quality and health of these waterbodies. The Connecticut Water Quality Standards establish minimum parameters to support the designated uses, including but not limited to aesthetics, dissolved oxygen, sludge, oil and grease, scum, color, suspended and settleable solids, silt or sand deposits, turbidity, bacteria, taste and odor, pH, temperature, chemicals, nutrients, sodium, and biological condition.⁷

Stormwater discharges flow from the Facilities into waters of the United States through the following paths: (1) Facility #1-into the Five Mile River, (2) Facility #2- into Fall Brook-Quinebaug River (3) Facility #4- into both the Cory Brook-Quinebaug River and the Moosup River, and (4) Facility #5- into both the Cory Brook-Quinebaug River and Mill Brook.

(1) Rawson Materials Plant #1 Discharges to the Five Mile River

Rawson Materials Plant #1 is bordered to the East by the Five Mile River (Water Body ID: CT3400-00_03). The relevant section of the Five Mile River (Water Body ID: CT3400-00_03) is designated a habitat for fish, other aquatic life, and wildlife, fish consumption, and recreation.⁸ Water Body CT3400-00_03 has not been listed as an impaired habitat for fish, other aquatic life and wildlife or fish consumption. It has not been assessed for recreation.

(2) Rawson Materials Plant #2 Discharges to Fall Brook-Quinebaug River

Rawson Materials Plant #2 is bordered to the east by Fall Brook-Quinebaug River (Water Body ID: CT3700-00_04). DEEP has classified the relevant section of the Quinebaug River (Water Body ID: CT3700-00_04) as impaired as a habitat for fish, other aquatic life, and wildlife.⁹ DEEP has determined that cause of the impairment is unknown.

⁷ CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION, WATER QUALITY STANDARDS REPORT (2015),

<https://eregulations.ct.gov/eRegsPortal/Browse/getDocument?guid={C0A3E155-0100-C1CF-85C3-D3C28F298640}> (Last accessed: January 8, 2018)

⁸ See 2014 WATER QUALITY ASSESSMENT FOR FIVEMILE RIVER (KILLINGLY-THOMPSON)—3 (2014),

https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=CT3400-00_03&p_cycle=2014&p_state=CT&p_report_type=.

⁹ See 2014 WATER QUALITY ASSESSMENT FOR QUINEBAUG RIVER (PUTNAM)-04 (2014),

https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_list_id=CT3700-00_04&p_cycle=2014&p_report_type=.

(3) Rawson Materials Plant #4 Discharges to Cory Brook and the Moosup River

Rawson Materials Plant #4 is bordered to the north and west by Cory Brook. To the east the facility is bordered by the Lower Moosup River. The confluence of these two rivers is directly to the north of the facility. The Cory Brook is a tributary of the Quinebaug River.¹⁰ Like Rawson Materials Plant #2, the relevant section of the Quinebaug River is CT3700-00_04, which is impaired as a habitat for fish, other aquatic life, and wildlife.

(4) Rawson Materials Plant #5 Discharges to Mill Brook

Rawson Materials Plant #5 has two pits. Mill Brook runs along the western side of Rawson Material's Plant #5 East Pit. The relevant section of Mill Brook (CT3713-00_02) is not considered impaired by DEEP.¹¹ Rawson Material's Plant #5 West Pit borders the Cory Brook-Quinebaug River. Like Rawson Materials Plants #2 and #4, the relevant section of the Quinebaug River is CT3700-00_04, which is impaired as a habitat for fish, other aquatic life, and wildlife.

Stormwater is water from precipitation events that flows across the ground and pavement after rain events or after snow and ice melt.¹² Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater flow.¹³ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁴

In order to discharge stormwater lawfully, Rawson is required to apply for coverage under a Clean Water Act National Pollutant Discharge Elimination System discharge permit such as the General Permit issued by DEEP. Rawson has failed to obtain a General Permit for the Discharge of Stormwater Associated with Industrial Activity issued by DEEP or any other valid authorization at any time. Therefore, Rawson is operating in violation of the Clean Water Act.

¹⁰ See CT DEEP TECHNICAL SUPPORT DOCUMENT: IDENTIFYING WATERSHEDS FOR RESTORATION AND PROTECTION ACTION PLANS WITH CONNECTICUT INTEGRATED WATER RESOURCE MANAGEMENT EFFORTS (2016), http://www.ct.gov/deep/lib/deep/water/integrated_water_quality_management/Technical_Support_Document_Identifying_Watersheds_for_Restoration_and_Protection.pdf (Last visited: November 11, 2017)

¹¹ See 2014 WATERBODY REPORT FOR MILL BROOK (2014), https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=CT3713-00_02&p_cycle=2014&p_state=CT&p_report_type=.

¹² See 40 C.F.R. § 122.26(b)(13).

¹³ See 40 C.F.R. § 122.26(b)(14).

¹⁴ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Strategic Commercial Realty dba Rawson Materials and the Facilities' owners and operators are the persons, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Rawson has operated Plant #1 since at least 1947, Plant #2 since at least 1980, Plant #4 since at least 1997, and Plant #5 since at least 2005.¹⁵ Rawson currently advertises as the operator of these facilities.¹⁶ Strategic Commercial Realty Inc. and its agents and directors, including but not limited to Jeffrey Rawson and Zangari Cohn Cuthbertson presidents, and directors, have operational control over the day-to-day industrial activities at the Facilities. Therefore, the Facilities owner(s) and operator(s) are responsible for managing stormwater at the Facilities in compliance with the Clean Water Act.

LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this Notice have occurred and continue to occur at the construction sand and gravel facilities located at the following addresses (1) Rawson Materials Plant #1, 205 Munyan Road, Putnam CT 06260, (2) Rawson Materials Plant #2, 6 Kennedy Drive, Putnam, CT 06260, (3) Rawson Materials Plant #4, 0 Black Hill Road, Plainfield CT 06374, (4) Rawson Materials Plant #5, 349 Norwich Road, Plainfield, CT 06374.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Strategic Commercial Realty dba Rawson has, and continues to, engage in "industrial activities," and its operations fall under SIC Code 1442, within the meaning of 40 C.F.R. § 122.26(b)(14).¹⁷ Because the Facilities have a primary SIC Code of 1442 and discharge stormwater associated with industrial activity, Rawson is required to apply for, obtain coverage under, and comply with the requirements of the General Permit or an individual NPDES permit. In addition, Rawson is required to obtain individual NPDES permit coverage for process wastewater discharges that may result from activities such as mine dewatering, crushing, washing, and other industrial processes. Rawson has failed to take any of these required steps.

¹⁵ See RAWSON MATERIALS "OUR HISTORY," available at

<http://www.rawsonmaterials.com/company/our-history/> (Last Visited: January 8, 2018)

¹⁶ See <https://www.concord-sots.ct.gov/CONCORD/PublicInquiry?eid=9744&businessID=0675890> (Last visited: January 08, 2017).

¹⁷ See GENERAL PERMIT, *supra* note 4, at § 5(f)(b)(specifying that activities covered include: SIC Major Group 14 that mine sand, gravel, stone, clay and other non-metallic minerals as well as those facilities that cut and shape stone products classified as SIC Code 3281).

Activities at the Facilities include, but are not limited to: storing, moving, and processing sand and gravel (exposed aggregate), and other materials outside or otherwise exposing them to the elements; operating and storing heavy machinery and equipment outdoors; and driving vehicles on and off the Facilities thereby tracking pollutants off-site. All of these activities at the Facilities have contaminated the sites with industrial pollutants.

Sand and gravel (exposed aggregate), and other materials; machinery and equipment; and vehicles at the Facilities are exposed to precipitation and snowmelt. Precipitation falls on and flows over the sand and gravel piles; machinery and equipment; and vehicles, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), fines, diesel/gas fuel, oil, heavy metals, trash, and other pollutants associated with the Facilities' operations. The polluted runoff is then conveyed off-site into waters of the United States.

In addition, to the extent that Rawson uses water in its industrial processes, including but not limited to washing sand, rock and gravel and spraying water on rock crushing and sorting machinery, that water becomes "process wastewater" (also referred to as "process water") as defined in 40 C.F.R. § 122.2.¹⁸ Discharges of process wastewater are not covered under Connecticut's General Permit for the Discharge of Stormwater Associated with Industrial Activity. Instead, discharges of process wastewater must be covered under an individual NPDES permit. CLF intends to pursue claims related to Rawson's unpermitted discharges of process water to waters of the United States.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

a. Rawson is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁹ Rawson's industrial activity at its Facilities have caused and continue to cause a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from the Facilities on at least each and every day that there has been a measurable rain event of above 0.1 inches.²⁰ There have been many such storm events since 2012.

¹⁸ Defining "Process wastewater" as "any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."

¹⁹ See 33 U.S.C. § 1311(a).

²⁰ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial

The Facilities are generating pollutants from and through at least the following point sources: the sand, gravel, and various other material piles that are open to the elements; the machines and equipment left outdoors, and the vehicles driving on and off the Facilities, while additionally conveying pollutants through site grading, surface water channels, subsurface hydrological connections, detention ponds, culverts, and other conveyances to the Five Mile River, Quinebaug River, Moosup River, Mill Brook and other waters of the United States. Facility #1 also discharges to a catch basin located downhill from the Facility on East Putnam Road, Putnam CT. Additionally, sediment tracking from trucks going in and out of Facility #1 is visible via GoogleEarth. The Five Mile River, Quinebaug River, Moosup River, Mill Brook flow into the Atlantic Ocean, all of which are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and therefore are also “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Facilities are discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Rawson is Violating the Clean Water Act by Failing to Obtain Coverage Under and Failing to Comply with the Requirements of the General Permit.

Rawson is an industrial discharger with a primary SIC Code of 1442 which means that pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Rawson is obligated to apply for coverage under the General Permit or an individual NPDES permit for its discharge of polluted stormwater and must comply at all times with the conditions of its permit. By failing to apply for, obtain coverage under, and comply with the requirements of the General Permit or an individual permit, Rawson is violating CWA Sections 301(a), 402(a), 402(p), 33 U.S.C. §§ 1311(a), 1342(a), 1342(p), 40 C.F.R. § 122.26(c)(1), and 40 C.F.R. § 122.26(e)(1).²¹ The primary General Permit requirements that the Rawson has failed and continues to fail to meet are detailed below.

1) Rawson must submit a registration form to DEEP to be covered under the General Permit.

To be eligible to discharge under the General Permit, Rawson must file a registration form with DEEP.²² To register, Rawson is required, among other things, to include a description of all

activity. *See, e.g.*, 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

²¹ Sections 301(a), 402(a), and 402(p) make it unlawful for Rawson to discharge stormwater associated with industrial activity without obtaining and complying with the conditions of a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and 122.26(e)(1) require Rawson to apply for a NPDES permit that covers its discharge of stormwater associated with industrial activity.

²² *See* GENERAL PERMIT, *supra* note 4, at § 4 (specifying that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a registration form to DEEP is required in order to obtain coverage under the General Permit). CLF does

stormwater discharges, including descriptions of: the conveyances, outfalls or channelized flows that run off the site, the property and amount of impervious surfaces in square feet or acres, the immediate surface water body or wetland to which the stormwater conveyance, outfall and/or runoff discharges, and the name of the watershed and nearest waterbody to which the site discharges and its Water Quality Classification.²³ Rawson has failed to prepare and file a registration form.²⁴

2) Rawson must develop and implement a Stormwater Pollution Prevention Plan.

Rawson must also prepare, make available, and implement a Stormwater Pollution Prevention Plan (“SWPPP”) in accordance with schedules established in the General Permit.²⁵ Among other things, the SWPPP must include: a Facility description, a general location map identifying the location of the Facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures, and schedules and procedures for implementation of control measures, monitoring and inspections, as well as certain additional requirements specific to sand and gravel facilities.²⁶ Rawson has failed to develop, make available, and implement a compliant SWPPP.²⁷

3) Rawson must implement control measures and Best Management Practices.

Facilities that become authorized to discharge stormwater under the General Permit must operate in accordance with mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the

not concede that all of the activities conducted at the Facility are necessarily eligible for coverage. For example, if the Facility is discharging process wastewater, such as wash water, or has any other non-stormwater discharge containing pollutants which is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also constitutes a violation of 33 U.S.C. §§ 1311(a), 1342(p).

²³ See GENERAL PERMIT, *supra* note 4, at § 4(c)(2)(F).

²⁴ A thorough search of EPA’s Enforcement & Compliance History Online (“ECHO”) database, and DEEP’s database, reveals that no registration form has been submitted for the Facilities. See U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE HISTORY ONLINE, <https://echo.epa.gov/> (Last Visited: January 8, 2018) and C.T. DEPT. OF ENERGY & ENVTL. PROTECTION, GENERAL PERMIT REGISTRATION FOR THE DISCHARGE OF STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY [http://www.depdata.ct.gov/permit/Industrial_Stormwater_Reg_Report.pdf].

²⁵ See GENERAL PERMIT, *supra* note 4, at § 5(c).

²⁶ *Id.* at § 5(f)(2)(Sector B).

²⁷ See *supra* note 24. A thorough search of the EPA’s and DEEP’s records reveals that as of the date of this Notice, no SWPPP has been prepared or submitted for the Facility as part of the Registration for permit coverage. On information and belief, no SWPPP exists.

Facilities.²⁸ These BMPs include, but are not limited to: minimizing exposure of stormwater to certain materials, for example by means of a permanent roof or cover;²⁹ managing stormwater runoff, for example through implementing measures such as diverting uncontaminated run-on to avoid areas that may contribute to pollutants, or through collection and reuse or treatment measures;³⁰ preventative maintenance and testing;³¹ spill prevention and response procedures;³² sediment and erosion control;³³ dust suppression;³⁴ and run-on diversion.³⁵

4) Rawson must conduct routine site inspections.

Facilities that become authorized to discharge under the General Permit must conduct routine comprehensive inspections of areas where industrial materials or activities are exposed to precipitation and must ensure that all stormwater control measures comply with the SWPPP.³⁶ There are two different kinds of inspections required by the General Permit. At least twice a year, qualified personnel must visually inspect material handling areas and other potential sources of pollution, and prepare a report summarizing the details and results of the inspection.³⁷ In addition, Rawson must also ensure that qualified personnel conduct monthly visual inspections of equipment and specific sensitive areas of the site.³⁸ Moreover, at least quarterly, the Facilities must also inspect stormwater management devices (e.g., oil and water separators, sediment traps or chambers, pressure wash collection systems), in addition to inspecting Facilities equipment and systems to prevent breakdowns or failures resulting in discharges of pollutants to surface waters.³⁹ The schedule of these inspections as well as the records and reports resulting from these inspections must be included in the SWPPP.⁴⁰ On information and belief, Rawson has failed to conduct the required routine inspections.

5) Rawson must comply with monitoring requirements.

²⁸ See GENERAL PERMIT, *supra* note 4, at §§ 5(b), 5(f) (detailing both general BMPs and sector-specific BMPs).

²⁹ See GENERAL PERMIT, *supra* note 4, at § 5(b)(5); see also GENERAL PERMIT, *supra* note 4, at § 5(c)(2)(D)(ii) (requiring an inventory of exposed materials).

³⁰ *Id.* at § 5(b)(7).

³¹ *Id.* at § 5(b)(8).

³² *Id.* at § 5(b)(9).

³³ *Id.* at § 5(f)(2)(B)(i).

³⁴ *Id.* at § 5(f)(2)(B)(ii).

³⁵ *Id.* at § 5(f)(2)(B)(iii).

³⁶ *Id.* at § 5(d).

³⁷ *Id.* at § 5(d)(1).

³⁸ *Id.* at § 5(d)(2).

³⁹ *Id.*

⁴⁰ *Id.* at § 5(d).

Facilities authorized under the General Permit must collect and analyze stormwater samples, document monitoring activities, and submit reports to DEEP.⁴¹ The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEEP may require additional individualized monitoring as well.⁴² In particular, because the Five Mile River, Quinebaug River, Moosup River, Mill Brook and downstream receiving waters are “impaired waters” under 33 U.S.C. § 1313(d), Rawson must monitor for all pollutants for which the waterbodies are impaired.⁴³

Samples must be collected from any discharge resulting from a storm event that occurs at least 72 hours after any previous storm event generating a stormwater discharge, and must be taken during the same storm event, if feasible.⁴⁴ These samples must be tested for pollution according to the methods prescribed in 40 C.F.R. pt. 136, unless otherwise specified in the General Permit.⁴⁵ On information and belief, Rawson has failed to conduct the required monitoring and testing under the General Permit and has failed to submit the required monitoring reports to DEEP.

6) Rawson Facilities 2 and 4 discharge into impaired waters, therefore Rawson must meet certain criteria.

As stated above, Rawson Facilities 2 and 4 discharge into the Fall Brook-Quinebaug River (Water Body ID: CT3700-00_04), which is listed as impaired as defined by the General Permit.⁴⁶ Industrial activities that discharge to impaired waters, such as those conducted by Rawson, are required to meet certain criteria identified in the General Permit.⁴⁷ Rawson has also failed to maintain compliance under the General Permit.⁴⁸ These criteria can apply even if the discharge is to receiving waters that are not specifically identified as impaired waters on a Section 303(d) list, where DEEP determines that the discharge is not controlled as necessary to meet water quality standards in a downstream water segment.

7) Rawson must comply with reporting and record keeping requirements.

⁴¹ *Id.* at § 5(e), 5(h).

⁴² *See* GENERAL PERMIT, *supra* note 4, at § 5(e).

⁴³ *See* GENERAL PERMIT, *supra* note 4, at § 5(e)(1)(D).

⁴⁴ *Id.* at § 5(e)(2)(A).

⁴⁵ *See* GENERAL PERMIT, *supra* note 4, at § 5(e)(2)(D)(i); *see also* 40 C.F.R. § 136. This does not include acute toxicity biomonitoring tests, as stated in the GENERAL PERMIT § 5(e)(2)(D)(ii).

⁴⁶ *See supra* note 9.

⁴⁷ *See* GENERAL PERMIT, *supra* note 4, at § 5(g).

⁴⁸ *Id.* at § 5(e)(1)(D).

Rawson must maintain and submit to DEEP any and all required monitoring data.⁴⁹ Required monitoring data includes: stormwater monitoring reports (SMR) identifying all discharges;⁵⁰ inspection reports, summarizing the scope and description of the inspections, as well as major observations, actions taken and updates made to the SWPPP;⁵¹ semiannual benchmark monitoring reports;⁵² an Exceedance Report that must be submitted to DEEP if any of the follow-up monitoring shows any exceedance of a numeric effluent limit;⁵³ and any other required reports under the General Permit.

For each measurement or sample taken pursuant to the requirements of the General Permit, Rawson must maintain records that include: the place, date, and time of sampling and the time the discharge started; the person(s) collecting the samples; the dates and times the analyses were initiated; the person(s) or laboratory that performed the analyses; the analytical techniques or methods used; and the results of all analyses.⁵⁴ All records and information resulting from the monitoring activities required by the General Permit, including all records of analyses performed and calibration and maintenance of instrumentation, must be retained for a minimum of five years following the expiration of the General Permit.⁵⁵ Moreover, Rawson has a duty to correct and report any violations immediately upon learning of such a violation(s).⁵⁶ On information and belief, Rawson has failed to maintain the required records and failed to submit all required monitoring data and reports.

8) Rawson must comply with additional requirements located in Section 5(f)(2)(Sector B) of the General Permit.

As noted above, the General Permit contains various requirements that are specific to Non-metallic Mines and Quarries. These requirements—many of which are listed above—are detailed in Section 5(b)(2)(Sector B) of the General Permit. On information and belief, Rawson has failed to comply with the additional requirements of these Sections of the General Permit.⁵⁷

In addition, Rawson must assure that any activities authorized under the General Permit are conducted in accordance with the following conditions under General Permit Section 5(a):

⁴⁹ *Id.* at § 5(h)(3).

⁵⁰ *Id.* at § 5(e)(2)(A).

⁵¹ *See* GENERAL PERMIT, *supra* note 4, at § 5(d)(1)(B).

⁵² *Id.* at § 5(e)(1)(B)(v).

⁵³ *Id.* at § 5(e)(1)(F)(ii).

⁵⁴ *Id.* at § 5(h)(1)(A).

⁵⁵ *Id.* at § 5(h)(2).

⁵⁶ *Id.* at § 6(b).

⁵⁷ *Id.* at § 5(f)(2)(Sector B)(A–C)(detailing Additional Requirements for Authorization, Additional Control Measures, and Additional Plan Requirements).

- General Permit Section 5(a)(3): There shall be no distinctly visible floating scum, oil or other matter contained in the stormwater discharge. Excluded from this are naturally occurring substances such as leaves and twigs provided no person has placed such substances in or near the discharge.
- General Permit Section 5(a)(4): The stormwater discharge shall not result in pollution due to acute or chronic toxicity to aquatic and marine life, impair the biological integrity of aquatic or marine ecosystems, or result in an unacceptable risk to human health.
- General Permit Section 5(a)(5): The stormwater discharge shall not cause or contribute to an exceedance of the applicable Water Quality Standards in the receiving water.
- General Permit Section 5(a)(6): Any new stormwater discharge to high quality waters (as defined in the Water Quality Standards) shall be discharged in accordance with the Connecticut Anti-Degradation Implementation Policy in the Water Quality Standards manual.

On information and belief, Rawson has failed to comply with these requirements.

Moreover, in Section 5(i) of the General Permit, DEEP incorporated by reference certain state regulations that set forth the duties of lawful NPDES permit holders. On information and belief, Rawson is also violating these obligations. These duties include:

- complying with all terms and conditions of a NPDES permit;
- properly operating and maintaining facilities and systems for wastewater collection, storage, treatment and control;
- using approved methods for disposal of any screenings, sludges, chemicals and oils and any solid or liquid wastes resulting from wastewater treatment;
- maintaining practices, procedures and facilities designed to prevent, minimize and control spills, leaks or such other unplanned releases of all toxic or hazardous substances and any other substances as the commissioner deems necessary to prevent pollution of the waters of the state; and
- taking all reasonable steps to minimize or prevent any discharge in violation of the permit or any discharge which has a reasonable likelihood of adversely affecting human health or the environment.⁵⁸

In sum, Rawson's discharge of stormwater associated with industrial activities without a permit and Rawson's failure to apply for, obtain coverage under, and comply with the above-listed conditions of the General Permit—or an individual NPDES permit—constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342(p).

⁵⁸ See Regulations of Connecticut State Agencies §§ 22a-430-3 (e)–(h), (p), which are incorporated into the General Permit in Section 5(i)(1).

DATES OF VIOLATION

Each day on which Rawson operates its Facilities without permit coverage or discharges stormwater and/or process wastewater without a permit from the Facilities is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Rawson has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since the commencement of Rawson's operation at the Facilities (or Oct. 1, 1992, whichever is later) on which there has been a measurable precipitation event. Each day on which Rawson operates its Facilities without permit coverage or discharges process water without a permit from the Facilities is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Every day, since at least 1947 on which Rawson has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the General Permit for the Discharge of Stormwater Associated with Industrial Activity issued by DEEP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A). These days of violation have continued consecutively since October 1, 1992, when Connecticut's first general permit for the discharge of stormwater associated with industrial activity came into effect, or the commencement of Rawson's operation at the Facilities, whichever is later.

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facilities and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Rawson is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Rawson to a penalty of up to \$37,500 per day per day per violation for all Clean Water Act violations occurring between January 12, 2009 and November 2, 2015; up to \$51,570 per day per violation for all CWA violations occurring after November 2, 2015 and assessed on or after August 1, 2016 but before January 15, 2017; and up to \$52,414 per day per violation for all Clean Water Act violations occurring after November 2, 2015 and assessed on or after January 15, 2017, pursuant to § 309(d) of the CWA, 33 U.S.C. § 1319(d),

and the regulations governing the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4. CLF will seek the full penalties allowed by law.⁵⁹

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Rawson to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



Zachary K. Griefen, Esq.
Senior Enforcement Litigator
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
zgriefen@clf.org

⁵⁹ See 33 U.S.C. § 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.



cc:

Scott Pruitt
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Alexandra Dapolito Dunn
Regional Administrator
Environmental Protection Agency, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109

Rob Klee, Commissioner
Connecticut Department of Energy & Environmental Protection
79 Elm Street
Hartford, CT 06106-5127